IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 213 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

BHUPATRAI BHAICHAND NATHWANI

Appearance:

1. Criminal Appeal No. 213 of 1994

MR. A.M. BHUKARI, A.P.P for Appellant No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/07/2001

ORAL JUDGEMENT

1. The State of Gujarat, aggrieved by the judgement and order passed by J.M.F.C. Kalavad on November 24, 1993 in Criminal Case No. 589/1992 acquitting the present respondent of the charges punishable under

Section 4 and 5 of the "Gambling Act" has preferred this appeal.

2. The facts of the case are that the respondent was charged to have committed an offence under Section 4 and 5 of the "Gambling Act" by accepting betting of "Varlimataka" on April 29, 1992 at about 20:30 hours in the Swaminarayan Sheri of Kalawad. Certain chits containing figures and Rs. 1,364/- were also seized.

3. Learned Magistrate, by the impugned order acquitted the accused persons by recording that the witnesses though summoned did not appear before him. Therefore, warrants were issued. The prosecuting agencies failed to serve the warrant on the witnesses. Ample opportunities have been provided to the prosecution to lead evidence but the prosecution failed to avail all the opportunity and therefore, the right of the prosecution to lead evidence was closed and ultimately acquittal came to be recorded.

4. Mr. A.M. Bhukari, submitted that opportunity was not provided to the State / prosecution to lead evidence. On perusal of the Rojnama of the Trial Court, it is found that the plea was recorded on September 21, 1993 and the witnesses were summoned on October 25, 1993. On that day, the Panch did not remain present and therefore, warrant was ordered to be issued which was supposed to be returned on November 24, 1993 and on November 24, 1993, the impugned order was passed. On that day Assistant Public Prosecutor had tendered an application Exh. 6 stating that the complainant and the witnesses are not present though summons have been served, and therefore, warrant may be issued. The Court passed an order stating that the application is rejected as sufficient time is given and the right of the prosecution to proceed with oral evidence is closed and thereafter the impugned order was passed below Exh. 1. From the record it is found that no warrant has been issued as directed by the Magistrate. The impugned order therefore appears to have been passed by the learned Magistrate in hot haste and without proper perusal of the record. It reflects non application of mind. It needs hardly a mention that although the offence is under the "Gambling Act" the menace of "Varlimatka" has eclipsed certain sections of society, which adversely effects their economic conditions and therefore from the point of view of the welfare of the society consideration has to be given to such activity, and the case could not have been thrown off on very first occasion.

5. The appeal therefore deserves allowance. The appeal is allowed. The judgement and order impugned herein are quashed and set aside. The criminal case is revived and remanded to the Trial Magistrate for disposal in accordance with law.

(A.L. DAVE,J.)

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